Supreme Court, U.S.
FILED

02 12 JUL 12 2002

No.

In The

Supreme Court of the United States

Christopher Langdon, Petitioner,

v.

Lyndo Tippett, Roy Cooper et al.

consolidated with:

Christopher Langdon, Petititoner,

v.

J.J. Swain, Jack Murdock, F.D. Martin et al.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

APPENDIX, PART I, FOR PETITION FOR WRIT OF CERTIORARI

Christopher Langdon
Pro Se
1835 Edwin Blvd.
Winter Park, Fla. 32789
407-647-7539

40 pg

APPENDIX, PART I
TABLE OF CONTENTS

Order, Mag. Judge Cogburn
7/27/01 1-3

Order and Memorandum of
Dismissal, Judge Thornburgh,
8/6/01 4-12

Order, Judge Thornburgh,
8/06/01.....13-14
Decision, U.S. Court of Appeals,
2/20/02 15-18

Order, U.S.C.O.A., 2/27/02 19-20

Order, U.S.C.O.A., 3/12/02 21

Order,U.S.C.O.A., 4/11/02 22-23

Statutes & Constitutional
Provisions 24-37

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA

FILED : ASHEVILLE, N.C.
2001 JUL 27 PM 4:32
U.S. DISTR. COURT
W. DIST OF N.C.

CHRISTOPHER LANGDON,
Plaintiff,

vs.

J.J. SWAIN; JACK MURDOCK;
F.D. MARTIN; DAVE HENDERSON
(ALL CURRENT OR FORMER
EMPLOYEES OF THE N.C. DEPT.
OF TRANSP.),
Defendants

ORDER

THIS MATTER is before the court upon the Motion for an Extension of Time to Answer filed on behalf of all defendants (#6); the Amended Motion for Extension of Time to Answer filed on behalf of defendants Swain, and Martin (#7); the Amended Motion for an

Extension of Time to Answer on behalf of Defendant Murdock (#8); plaintiff's Motion For Default Entry By the Clerk of Court (#9); and plaintiff's Correction of Motion for Default Entry By Clerk of Court (#10).
It appearing that defendants' error in seeking the proposed extensions was based upon a misunderstanding as to when defendants were served and that defendants took prompt remedial action, the court attributes the error to excusable neglect and will grant the proposed extensions, which moots plaintiff' motions.

ORDER

IT IS THEREFORE ORDERED that
(1) defendants' amended motions for extension
of time to answer (#s 7 & 8) are GRANTED, and
defendants are allowed up to and inclusive of August 17, 2001, to answer or otherwise respond; (2) defendants Motion for Extension of Time to File Answer (#6) is DENIED as moot;
(3) plaintiff's Motion for Default Entry By Clerk of Court (#9) is DENIED as moot;
(5) [sic] plaintiff's Correction for Default Entry By the Clerk of Court (#10) is DENIED as moot.

This the 27th day of July, 2001.

"s/_____."
Max Cogburn, Jr.
United States Magistrate Judge

IN DISTRICT COURT OF THE UNITE STATES
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
FILED: ASHEVILLE, N.C.
2001 AUG.-6 PM 3:56
U.S. DISTRICT COURT
W. DIST. OF N.C.

CHRISTOPHER LANGDON,
Plaintiff,
vs.
LYNDO TIPPETT, Secretary of Transportation; NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; ROY COOPER, Attorney General; STATE OF NORTH CAROLINA; and NORTH CAROLINA DEPARTMENT OF JUSTICE,
Defendants

CHRISTOPHER LANGDON,
Plaintiff,
vs.
J.J. SWAIN; JACK MURDOCK; F.D. MARTIN; DAVE HENDERSON (ALL CURRENT OR FORMER EMPLOYEES OF THE N.C. DEPARTMENT OF TRANSP.),
Defendants

MEMORANDUM AND ORDER OF DIMISSAL

THESE MATTERS are before the Court on numerous motions filed by the Plaintiff. For the reasons set forth herein, the cases are consolidated and dismissed.

I. CONSOLIDATION

On May 21, 2001, Plaintiff filed Civil No: 1:01cv 107, *Langdon v. Tippett et al.*, ("Tippett"action) in this Court against the North Carolina Department of Transportation (DOT) and other agencies alleging that certain statutes are unconstitutional and seeking declaration thereof. Defendants answered that complaint by asserting that numerous defenses, including *res judicata*. On about June 18, 2001, Plaintiff filed Civil No: 1:01cv139, *Langdon v. Swain, et al.*, ("DOT" action) suing four employees of DOT. Both Lawsuits stem from the same set of facts pursuant to which Plaintiff claims that an inverse condemnation of his real property occurred. Exhibits attached to the Plaintiff's complaints show that beginning in 1995, he became embroiled in a dispute with DOT over the location of a drainage pipe which the Plaintiff claimed destabilized his property and caused a landslide. He also claimed that an earth mass located on his property should be removed by DOT because it presented a

potential danger to users of the road beneath. DOT declined because there had been no activity by the department on or near the Plaintiff' property. DOT also noted that the pipe had been extant for the past 50 years and there was no geological evidence that it was the cause of the landslide. Because of the instability of the earth mass, Plaintiff has been unable to obtain the permits necessary to develop the real estate and hence, claims the land was inversely condemned, his constitutional rights have been violated, and he has been financially damaged.

Federal Rule of Civil Procedure 42 provides for consolidation '"[w]hen actions involve a common question of law or fact...[in order] to avoid unnecessary costs or delay." Fed.R.Civ.P.42(a).

District Courts have the inherent authority to order consolidation *sua sponte*. *Pickle v. CharLee Seafood, Inc.*, 174 F. 3d 444 (4th Cir.1999) (Acknowledging authority although determining inappropriate under the facts). The two pending cases in this Court clearly involve common questions of law and fact and consolidation will avoid unnecessary cost and delay. The under-signed therefore consolidates the actions.

II. *Res Judicata*

In 1998, Plaintiff filed an action in state court against DOT alleging damage to his property and his reputation [sic].

(footnote #1. Either prior to or while this state court action was pending, plaintiff filed three tort claims with the N.C. Industrial Commission. Last year, Plaintiff yet another action against DOT and the same individual Defendants named in this action. *Langdon v. Swain, et al.*, Polk County Superior Court File No. 00 cvs 206. That action contained the same factual allegation as set forth herein and in the previous actions. After the DOT answered and demanded sanctions against the Plaintiff, he voluntarily dismissed the action. Plaintiff also field suit in the state district court for Henderson County alleging state agents had withheld from him public records involving construction on his property.)

Langdon v. North Carolina Dept. of Transp., Polk County Superior Court File No: 98 cvs 139. On January 15, 1999, he signed a release in which, for sum of $2,000, he acknowledged the release to be " a complete bar to all claims or suits for injuries or damages of whatsoever nature resulting from said incident, excepting only the purported inverse condemnation claim set forth in

Christopher Langdon v. North Carolina Department of Transportation, Polk County Superior Court File No. 98 cvs 139." Exhibit 10, attached to DOT Complaint.

As to that claim, the trial court thereafter granted DOT's motion for summary judgment and the North Carolina Court of Appeals affirmed the dismissal of the action without published opinion. *Langdon v. North Carolina Dept. of Transportation*, 138 N.C. App. 553, 556 S.E. 2d 425 (2000).

The undersigned *sua sponte* finds the consolidated cases must be dismissed because they are barred by the doctrine of *res judicata.Arizona v. California*, 530 U.S. 392 (2000) (recognizing *sua sponte* dismissal in the interest of judicial economy).

"*Res Judicata*" precludes the assertion of a claim after a judgment on the merits in a prior suit by the parties or their privies based on the same cause of action. The preclusive affect of a prior judgment extends beyond claims or defenses actually presented in previous litigation, for [n]ot only does *res judicata* bar claims that were raised and fully liigated, it prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in

the prior proceeding." *Meekins v. United Transp. Union*, 946 F. 2d 1054, 1057 (4th Cir. 1991) (citations omitted). Stated simply, "if the latter litigation arises from the same cause of action as the first, then the judgment bars litigation not only of every matter actually adjudicated in th earlier case, but also every claim that might have been presented." *In re Varat Enterprises, Inc.*, 81 F. 3d 1310, 1315 (4th Cir. 1996). In order to be barred by the doctrine, there must be "(1) a final judgement on the merits in a prior suit, (2) anidentity of the cause of action in both the earlier and later suit, and (3) identity of the parties or their privies in the two suits." *Jones v. S.E.C.* 115 F. 3d 1173,1178 (4th Cir.1997). Each of these elements is met here. Plaintiff attempts to create new claims; however, each "new claim arises out of the same transactions or series of transactions as the claim *resolved by the prior judgment*" and, thus are barred because they could have been brought in the earlier action. *Meekins*, 946 F. 2d at 1058.

III. FRIVOLOUS AND MALICIOUS FILING

Moreover, the undersigned finds that the Plaintiff has engaged in a pattern of frivolous

litigation designed to harass the state defendants and the individual employees thereof. Federal Law requires that, "[n]otwithstanding any filing fee... that may have been paid, the court *shall dismiss* the case at any time if the court determines that ...the action...is frivolous or malicious..." 28 U.S.C. Section 1915(e)(2)(emphasis added). The Court is therefore obligated to dismiss such a case. *Carr v. Dvorin*, 171 F. 3d 115, 116 (2nd Cir. 1999).

IV. WARNING AGAINST FUTURE FRIVOLOUS FILINGS

Federal rule of Civil procedure 11 provides in pertinent part: 'By presenting to the court... pleading...an..unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims...are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law...; (3) the allegations and other factual contentions

have evidentiary support or, ...are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery..." Fed.R.Civ.P.11(b).

Moreover, federal courts have an inherent obligation to protect themselves and the public from malicious and frivolous filings. *Foley v. Fix*, 106 F. 3d 556 (4th Cir. 1997); *Plimpton v. Cooper*, 141 F. Supp. 2d 573 (W.D.N.C.2001). Plaintiff is hereby warned that future filing in this District of a frivolous or malicious action stemming from the facts and circumstances involved in these actions may subject himself to the imposition of sanctions, including an injunction against further filings.

V. ORDER

IT IS, THEREFORE, ORDERED that the above captioned actions are hereby CONSOLIDATED; and IT IS FURTHER ORDERED that the following motions of the Plaintiff are hereby DENIED: (1) the motion for an extension of time to respond to the Defendants answer: (2) the motion for default judgment and request for evidentiary hearing; (3) the motion for hearing and oral arguments; (4) the motion to enjoin note-

holders and trustees;
(5) a notice of appeal which is construed as a motion to certify this matter as an interlocutory appeal; and IT IS FURTHER ORDERED that these actions are hereby DISMISSED WITH PREJUDICE in their entirety.

THIS the 6th day of August, 2001.

" s/_____."
LACEY H. THORNBURGH
UNITED STATES DISTRICT COURT JUDGE

IN DISTRICT COURT OF THE UNITE STATES
FOR THE WESTERN DISTRICT
OF NORTH CAROLINA
FILED: ASHEVILLE, N.C.
2001 AUG.-6 PM 3:56
U.S. DISTRICT COURT
W. DIST. OF N.C.

CHRISTOPHER LANGDON,
Plaintiff,
vs.
LYNDO TIPPETT, Secretary of Transportation; NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; ROY COOPER, Attorney General; STATE OF NORTH CAROLINA; and NORTH CAROLINA DEPARTMENT OF JUSTICE,
Defendants

CHRISTOPHER LANGDON,
Plaintiff,
vs.
J.J. SWAIN; JACK MURDOCK; F.D. MARTIN; DAVE HENDERSON (ALL CURRENT OR FORMER EMPLOYEES OF THE N.C. DEPARTMENT OF TRANSP.),
Defendants

ORDER

THESE MATTERS are before the Court on Plaintiff's motions for change of venue, second motion for an extension of time to respond to the Defendant's answer, and to recuse: all the motions are filed in civil action 1:01cv107.

The Court having dismissed these actions by way of an Order of Dismissal file this date. IT IS

THEREFORE ORDERED, that plaintiff's motions are hereby DENIED as moot.

THIS the 6th ay of August, 2001.

"s/_____."
LACY H. THORNBURGH
UNITED STATES DISTRICT COURT JUDGE

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CHRISTOPHER LANGDON,
Plaintiff-Appellant,
v. No:01-1975
J.J. SWAIN; JACK MURDOCK;
F.D MARTIN; DAVE HENDERSON,
All Current or Former Employees
of the N.C. Department of Trans
portation,
Defendants-Appellees.

CHRISTOPHER LANGDON,
Plaintiff-Appellant,
v. No: 01-2019

J.J. SWAIN; JACK MURDOCK,
F.D. MARTIN, DAVE HENDERSON,
And all Current or Former Employees
of the N.C. Dept. of Transportation[sic];
LYNDO TIPPETT, Secretary of
Transportation of the State of N.C.;
NORTH CAROLINA DEPT. OF
TRANSPORTATION; ROY COOPER,
Attorney General of North Carolina;
NORTH CAROLINA DEPT. OF JUSTICE;
THE OFFICE OF THE ATTORNEY
GENERAL OF NORTH CAROLINA,
Defendants-Appellees.

LANGDON v. SWAIN

Appeals from the United States District Court for the Western District of North Carolina, at Asheville.
Max O. Cogburn, Magistrate Judge.
(CA-01-107, CA-01-139)

Submitted: January 31, 2002
Decided :February 20, 2002

Before NIEMEYER and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge

Affirmed by unpublished opinion per curiam

COUNSEL

Christopher Langdon, Appellant Pro Se, Robert Orr Crawford III, NORTH CAROLINA DEPART-MENT OF JUSTICE, Raleigh, North Carolina; Lisa Carol Glover, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, Raleigh, North Carolina, for Appellees

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM

In these consolidated appeals, Christopher Langdon appeals the district court's dismissal of his two civil actions against the Appellees, seeking 1) to invalidate the state statutes of limitations relied on as defenses to his previous state actions against the Appellees arising from a 1995 landslide on his property, and 2) monetary damages for a taking in violation of the Fifth Amendment. Having reviewed the parties' filings, the district court's opinion and orders, and the record on appeal, we affirm. Additionally, we grant the Appellee's motion to file supplemental materials, deny Langdon's motions for sanctions, deny Langdon's motion to strike Appellee's informal brief, and deny Langdon's motion for default judgment.

Turning to the merits of Langdon's appeal, we find his actions were properly dismissed by the district court. As the district court noted, Langdon's prior state actions named the North Carolina Department of Transportation ("NCDOT") as defendant and addressed issues arising from the same incidents at issue here. However, in federal court Langdon named only the NCDOT in the first complaint and four employees of the NCDOT in the separate complaint alleging an improper taking. We find Langdon's first

action was properly subject to dismissal on the basis of res judicata. *Bockweg v. Anderson*, 428 S.E. 2d 157, 161 (N.C. 1993); *Caswell Realty Assoc. I,L.P. v. Andrews Co.*, 496 S.E. 2d 607, 610 (N.C.Ct.App. 1998). Further, because takings actions sound against governmental entities rather than individual state employees in their individual capacities, *see Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 687 (1978); *see also Kentucky v. Graham*, 473 U.S. 159, 165 (1985), Langdon's second federal suit was properly subject to dismissal either based on res judicata, in light of the complete identity of parties and issue involved, *see Bockweg*, 428 S.E. 2d at 161; *Caswell*, 496 S.E. 2d at 610, or for failure to state a claim. Accordingly, we find no error in the district court's dismissal of Langdon's actions as frivolous or malicious under 28 U.S.C.A. Section 1915(e)(2) (West Supp. 2001).*[* We reiterate the district court's warning that continuing to file frivolous or malicious pleadings in this Court or the district court could lead to the imposition of sanctions under Fed.R.Civ.P.11.

Langdon also raises two additional assignments of error, which we also find to be meritless. First, we find no abuse of discretion in the district court's denial of

Langdon's motion to recuse the district court judge pursuant to 28 U.S.C. Section 455(a) (1994). *United States v. De Temple*, 162 F. 3d 279, 283 (4th Cir. 1998). Second, we find no abuse of discretion in the court's granting Appellees' motion to reopen the period for filing their answer pursuant to Fed.R.Civ.P. 6. *See pioneer Investment Services Co. v. Brunswick Associates Ltd.*, 507 U.S. 380, 392 (1993); *Mendez v. Elliot*, 45 F. 3d75, 79 (4th Cir. 1995).

For these reasons, we affirm the dismissal of Langdon's civil actions and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court a argument would not aid the decisional process.

AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE FOURTH CIRCUIT
FILED
February 27th, 2002

No. 01-1975
CA-01-107
CA-01-139

CHRISTOPHER LANGDON,
Plaintiff-Appellant
v.
J.J. SWAIN, JACK MURDOCK; F.D. MARTIN; DAVE HENDERSON, And all Current or Former Employees of the N.C. Department of Transportation [sic]
Defendants-Appellees

No. 01-2019
CA-01-139
CA-01-107

CHRISTOPHER LANGDON,
Plaintiff-Appellant
v.
J.J. SWAIN; JACK MURDOCK; F.D. MARTIN; DAVE HENDERSON, AND All Current or Former Employees of the N.C. Department of Transportation [sic]; LYNDO TIPPETT,

Secretary of Transportation of the State of N.C.; NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; ROY COOPER, Attorney General of North Carolina, NORTH CAROLINA DEPARTMENT OF JUSTICE; THE OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA

Defendants-Appellees

ORDER

The appellant has filed a motion for an extension of time in which to file a petition for rehearing and rehearing en banc. The Court denies the motion.

For the Court-By Direction

/s/Patricia S. Connor
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
FILED: March 12th, 2002

NOS. 01-1975(L)
(CA-01-107, CA-01-139)

CHRISTOPHER LANGDON,
PLAINTIFF-APPELLANT,
versus
J.J. SWAIN, et al.,
DEFENDANTS-APPELLEES

ORDER

The court amends its opinion filed February 20, 2002, as follows:

On page 2, section 1, Line 3–"Lacy H. Thornburgh, District judge;" is added.

For the Court-By Direction

/s/ Patricia S. Connor
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
FILED
APRIL 11, 2002
NO. 01-1975
CA-01-107
CA-01-139

CHRISTOPHER LANGDON
PLAINTIFF-APPELLANT

v.

J.J. SWAIN; JACK MURDOCK; F.D. MARTIN; DAVE HENDERSON, And all Current or Former Employees of the N.C. department of Transportation [sic]
DEFENDANTS-APPELLEES

CHRISTOPHER LANGDON; JACK MURDOCK; F.D. MARTIN; DAVE HENDERSON, And All Current or Former Employees of the N.C. Department of Transportation [sic]; LYNDO TIPPETT, Secretary of Transportation of the State of N.C.; NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; ROY COOPER, Attorney General of North Carolina; NORTH CAROLINA DEPARTMENT OF JUSTICE; THE OFFICE OF THE

ATTORNEY GENERAL OF NORTH CAROLINA
Defendants-Appellees

On Petition for Rehearing and
Rehearing En Banc

Appellant's petition for rehearing and rehearing en banc with amendments, motion to supplement the petition for rehearing and rehearing en banc, and second motion to supplement the petition for rehearing an rehearing en banc were submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc.

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
CLERK

CONSTITUTIONAL PROVISION & STATUTES (FEDERAL)

U.S. Constitutional Amendment I.

" Congress shall make no law...abridging the freedom of speech...or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Constitutional Amendment V.

" No person shall be...deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Constitutional Amendment XIV.

" No person State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

28 U.S.C., Section 1331. Federal Question

" The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States."

28 U.S.C., Section 1343. Civil Rights and Elective Franchise

" The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42 [42 U.S.C., Section 1985].
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United

States;
(4) To recover all damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote...."

28 U.S.C.A, Section 1738. State and Territorial Statutes and Judicial Proceedings; Full Faith and Credit

" The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, territory or possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and possessions as they have by law or usage

in the courts of such State, territory or Possession from which they are taken.

Rule 44(a)(1), Federal Rules of Civil Procedure

" (a) Authentication.
(1) Domestic. An official record kept within.. any state...may be evidenced by an official publication thereof or by a copy attested by the office having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office."

28 U.S.C., Section 1915. Proceedings in forma pauperis

" ...(b)(1) Notwithstanding subsection (a), if a *prisoner* [emphasis added]brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full

amount of a filing fee. The court shall assess and, when funds exist, ..collect partial payment..
(e)(1) The court may request an attorney to represent any person unable to afford counsel.
(2) Notwithstanding any filing fee, or any portion thereof, that may have been made paid, the court shall dismiss the case at any time if the court determines that---
(A) the allegation of poverty is untrue; or
(B) the action or appeal—
(i) is frivolous or malicious; ..."

<u>28 U.S.C., Section 1983. Civil Action for deprivation of rights.</u>

" Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an

act or omission taken such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.
For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

42 U.S.C., Section 1985. Conspiracy to interferewith civil rights.

(2) .. .or If two or more persons in any State or Territory conspire for the purpose of impeding, hindering obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection under the laws;
(3) ....If two or more persons in any State or Territory conspire...for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the

constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ..in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators."

42 U.S.C., Section 1986. Action for neglect to prevent conspiracy

"Every person who, having knowledge that any of the wrong conspired to be done, and mentioned in the preceding section [42 U.S.C., Section 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which

such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case.."

RULE 55, F.R.CIV.P.

"Rule 55. DEFAULT
(a) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the default."

LOCAL RULE 7.1(A), (W.D.N.C)

"...Any motions other than for dismissal, summary judgment, or default judgment should show that counsel have met and attempted in good faith to resolve areas of disagreement and set forth which issues remain unresolved."

LOCAL RULE 46(F), U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

" ...Cases involving pro se litigants are ordinarily not scheduled for oral argument."

N.C. CONSTITUTIONAL PROVISIONS &
N.C. CONSTITUTION, ARTICLE I, SECTION1

" We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness."

N.C CONSTITUTION, ARTICLE I, SECTION 18

" All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial or delay."

N.C CONSTITUTION, ARTICLE 1, SECTION 19

No person shall be... disseized of his freehold liberties, or privileges, or outlawed, or exiled, or
in any manner deprived of his life liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws.."

N.C CONSTITUTION, ARTICLE I, SECTION 25

" In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable."

N.C. CONSTITUTION, ARTICLE I, SECTION 35

" A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty. "

N.C CONSTITUTION, ARTICLE 1, SECTION 36

" The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people."

THE MAGNA CARTA (1215)

" No freeman shall be..disseized unless by the lawful judgment of his peers, or by the law of the land."

CHAPTER 132, Public Records, Sections 132-1 through 132-7

"The public records and public information compiled by the agencies of North Carolina government..are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost..Section 132-3...the public official in charge of an having public records shall be the custodian thereof...Section 132-3...Whoever unlawfully removes a public record from the office where it is usually kept ...shall be guilty of a Class 3 misdemeanor ...Section 132-5...Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him... Section 132-6...Every custodian of public records shall permit any record in the custodians custody to be inspected and examined at reasonable times and under reasonable supervision by any person and shall, as promptly as possible, furnish copies thereof upon payment of any fees as ay be prescribed by law...Section 136.2...Persons requesting copies of public records may request that the copies be certified or uncertified...All public records should be kept in the buildings in which they are ordinarily used."

The constitutionality of the following N.C. General Statutes is challenged in 1:01cv107, W.D.N.C. (Exhibit1): NCGS 136-103, to 112; N.C.G.S. 1-35, 1-51, 40A-51.

N.C.G.S. 1-35

" The State will not sue any person for.. any real property..by reason of the right to title of the State to the same–(1) When the person in possession thereof ..has been in adverse possession thereof for thirty years..(2) When the person in possession thereof...has been in possession under color of title for twenty-one years.."

N.C.G.S. 1-51

" Within five years–
(1) No suit, action or proceeding shall be brought..against a railroad company..for damages or compensation for right of way or use and occupancy of any lands by the company for use of its railroad unless the action or proceeding is commenced within five years after the lands have been entered upon for the purpose of constructing the road, or within to years after it is in operation.

(2) No suit or action or proceeding shall be brought...against any railroad company for damages caused by the construction of the road, or the repairs thereto, unless such suit..is commenced within five years after the cause of action accrues.."

N.C.G.S. 40A-51

"If property has been taken by ...a condemnor listed in G.S. 40A-3(b)or (c)...the owner of the property may initiate an action to seek compensation for the taking. The action may be initiated within 24 months...(c) nothing in this section shall in any manner affect an owner's common law right to bring an action in tort for damage to his property."

N.C.G.S. 136-103

" In case condemnation shall become necessary the Department of Transportation shall institute a civil action..."

N.C.G.S. 136-108

" ...the judge, upon motion..shall..hear and determine any and all issues raised by the pleadings other than the issue of damages,

including, but not limited to,...questions of necessary and proper parties, title to the land, interest taken and area taken."

N.C.G.S. 136-111

" Any person whose land ..has been taken by ...the Department of Transportation...may, within 24 months of the date of the taking of the affected property or interest therein..file a complaint.."